APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.

DHANPAT RAE (DEFENDANT-APPELLANT) *v.* ALLAHABAD BANK, LTD., LUCKNOW, AND ANOTHER (PLAINTIFFS-RESPONDENTS).* 1926 April, 26.

Contract Act (IX of 1872), sections 188 and 189—Principal and agent—Agent's authority to pledge the credit of the principal—Implied authority of agent to borrow money necessary for management of business—Loan taken by agent for benefit of business, principal's liability to pay.

An agent has implied authority to pledge the credit of his principal for what is necessary to the successful management of the business and, as usual, an agent in charge of a business has implied authority to bind his principal by raising a loan for the purposes thereof, only if his act is necessary or is usual in the management of the particular business or is justified by an emergency. If the implied authority of an agent to raise a loan is not established, but it is proved that the sum borrowed, or a portion thereof, has been applied for the benefit of the business, the creditor is entitled to be reimbursed by the principal to the extent he has been benefited.

Where the manager of a press, who had full powers to do all things necessary for the business and to receive money and spend it in the business, contracted a loan, with the knowledge of the proprietor, for carrying on the business of the press, and there was no doubt that money was urgently wanted for the press and it was used in the business of the press, in fact the press would have stopped if the money had not been borrowed, *held* that the manager had implied authority to borrow money on behalf of the press and he borrowed the same in exercise of that authority and the proprietor was liable to pay the same. *Haramba Chandra Pal Chowdhury* v. *Kasi Nath Sukul* and another (1), *Reversion Fund and Insurance Company, Ltd.* v. *Maison Cosway, Ltd.* (2), and

* Second Civil Appeal No 461 of 1924, against the decree of Abdul Haq, Subordinate Judge of Mohanlalganj, Lucknow, dated the 9th of September, 1924, setting aside the decree of Humayun Mirza, Munsif South, Lucknow, dated the 31st of August, 1923.

(1) (1905) 1 C.L.J., 199. (2) (1913) L.R., 1 K.B.D., p. 264.

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Suppayya Pattar alias *Suppayya Iyer* v. *Dawood Haji Ahmad Sait* (1), relied upon.

Mr. *Hyder Husain*, for the appellant.

Mr. *Khaliquzzaman* holding brief for Mr. *M. Wasim*, for the respondent.

Misra and Raza, JJ.

MISRA and RAZA, JJ. :—This is an appeal from a decree of the learned Subordinate Judge of Mohanlalganj, Lucknow, dated the 9th of September, 1924, setting aside a decree of the learned Munsif (South), Lucknow, dated the 31st of August, 1923.

The facts of this case, so far as it is necessary to state them for the purpose of disposing of this appeal, are as follows :—

The defendant No. 1, Dhanpat Rae Chaturvedi, is the proprietor of a printing press at Lucknow which carries on its business under the designation of the Church Mission Congregation Press. The defendant No. 2, Parsotam Lal Chaturvedi, who is a distant maternal uncle of the defendant No. 1, managed the business of the press. He, in the capacity of the manager, opened a current account in the Allahabad Bank, Ltd. (plaintiff), on the 19th of August, 1920. By the close of the year the press stood in need of some money which the proprietor apparently was not in a position to supply. The manager wrote to the Allahabad Bank on the 16th of December, 1920, for permission to overdraw the current account of the press. The occasion which compelled the manager to arrange with the Bank for the honouring of the overdrafts was in connection with the printing of patwari forms, the largest order ever received by the press. When the time for printing came, the pay of the servants was in arrears, and, in these circumstances, the manager asked the accountant of the Bank for permission to overdraw, which was eventually granted. Various sums

(1) M.W.N., (1915), p. 761.

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were overdrawn and paid by the manager of the press from time to time. On the 19th of July, 1922, an overdraft balance of Rs. 1,883-8-3 was found due against the press. The plaintiff Bank demanded the sum, but the defendant No. 1 disclaimed all responsibility and contended that the defendant No. 2 was not the manager, that he had no power to overdraw, and that the overdrafts could not bind the press or its proprietor. The present suit was brought under these circumstances. The defendant No. 2 admitted the claim urging that the debt was contracted for the purposes of the press and was spent in the business connected with it and the defendant No. 1 had full knowledge of all this.

The first court dismissed the suit as against the proprietor, but decreed it as against the defendant No. 2. The plaintiff Bank appealed. The appeal was allowed and the claim of the plaintiff was decreed against the defendant No. 1 by the lower appellate court. The defendant No. 1 has now come to this Court in second appeal. In our opinion this appeal is concluded by the findings of fact.

It has been found that the defendant No. 2 was the manager of the press and had full powers to do all things necessary for the business. He had power to receive money and spend it in the business. There exist numerous cheques drawn by him as manager and cashed by the Bank. There existed no limitation on his authority so far as the public or the persons dealing with him were concerned. All money which the manager drew from the Bank was entered in the books of the press. He used to draw the money from the Bank and deposit sums which were received by the press from its customers. This state of affairs continued for not less than one year and a half and the total amount of money taken from the Bank amounted

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to Rs. 8,893-15-9. The total deposits within the period in suit amounted to Rs. 7,043-5-6. Out of the sum taken out of the Bank, no less than a sum of Rs. 8,059-1-0 has been traced towards the expenditure of the press. The balance could not be traced owing to the irregularity of the account books of the press. The press would not have been able to carry on the business but for the help received from the Bank. The proprietor must be presumed to have known the condition of the accounts as well as the fact that the business of the press was being carried on with the help of overdrafts. He acquiesced in the procedure and reaped advantage from it. The defendant No. 2 had implied authority to borrow on behalf of the defendant No. 1 and he borrowed in exercise of that authority for the purposes of the press. It was necessary to contract the debt for carrying on the business of the firm of which the defendant No. 2 was in full charge, and the debt was in fact contracted with the knowledge of the proprietor. The defendant No. 1 must be deemed to have ratified the transaction in suit under the circumstances of the case.

All these findings are based upon admissible evidence and must be accepted in second appeal. When these findings are accepted (as they must be accepted), the appeal must be dismissed.

Under section 188 of the Indian Contract Act an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose or usually done in the course of conducting such business. Under section 189 of the same Act an agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a

person of ordinary prudence, in his own case, under similar circumstances.

It was held in the case of *Haramba Chandra Pal Chowdhury* v. *Kasi Nath Sukul* and another (1) that an agent has implied authority to pledge the credit of his principal for what is necessary to the successful management of the business and, as usual, an agent in charge of a business has implied authority to bind his principal by raising a loan for the purposes thereof, only if his act is necessary or is usual in the management of the particular business or is justified by an emergency. It was held further that if the implied authority of an agent to raise a loan is not established, but it is proved that the sum borrowed, or a portion thereof, has been applied for the benefit of the business, the creditor is entitled to be reimbursed by the principal to the extent he has been benefited. In the case of *Reversion Fund and Insurance Company, Ltd.* v. *Maison Cosway, Ltd.* (2), the managing director of the defendant company was, by the terms of his appointment, prohibited from borrowing money on behalf of the company, unless specially authorised so to do by the company. Without authority from the defendant company he borrowed money on its behalf from the plaintiff company, which money he applied in discharging existing legal debts of the defendant company. The plaintiff company knew through its officers, when the advance was made, that the managing director of the defendant company had no authority to borrow on its behalf. It was, however, held that the plaintiff company was entitled to recover from the defendant company the amount advanced notwithstanding its knowledge as before mentioned.

(1) (1905) 1 C. L.J., 199. (2) (1913) L.R., 1 K.B.D., p. 364.

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Misra and Raza JJ.

As pointed out in *Suppayya Pattar* alias *Suppayya Iyer* v. *Dawood Haji Ahmad Sait* and others (1), where the principal has been benefited by the money borrowed by the unauthorised agent from the plaintiff, either by the principal having received the money directly or by its having been spent in meeting his legal liabilities, the principal is equitably bound to return to plaintiff the said money to the extent that he has derived benefit therefrom.

"Where, however, an act done by an agent is not done in the ordinary course of business or falls outside the apparent scope of his authority, the principal is not bound by such act, even if the opportunity to do it arose out of the agency, and it was purported to be done on his behalf, unless he expressly authorised it, or *adopted it by taking the benefit of it* or otherwise. And in particular, where the agent obtains the money or property of a third person by means of any such act, the principal is not responsible unless the money or property or the proceeds thereof have been received by him, *or have been applied for his benefit, in which case he becomes liable* to the extent of the benefit received." (See Halsbury's Laws of England, Vol. I. pp. 202 and 203.)

There is no doubt that money was urgently wanted for the press and it was used in the business of the press. The press would have surely stopped if the money had not been borrowed. Under these circumstances the learned Subordinate Judge was perfectly right in holding that the defendant No. 2 had implied authority to borrow money on behalf of the press and he borrowed the same in exercise of that authority and the defendant No. 1 is liable to pay the same. In our opinion the judgment of the learned Subordinate Judge is quite correct. The claim was

(1) M.W.N. (1915), p. 761.

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properly decreed against the defendant No. 1 (appellant).

We dismiss the appeal with costs. The decree of the lower appellate court is confirmed in all respects.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Kt., Chief Judge, and Mr. Justice Muhammad Raza.

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GAURI SHANKAR (DECREE-HOLDER-APPELLANT) *v.* KUNWAR JANG BAHADUR (JUDGMENT-DEBTOR-RESPONDENT).*

Civil Procedure Code (V of 1908), order 21, rule 15—Execution of decree—Partial execution of decree, permissibility of.

Held, that it is not open to a decree-holder to apply for partial execution of a decree.

Where a decree is in favour of two persons, an application by one of them for execution of only half of the decretal amount is not a good application and cannot be given effect to. *Ram Autar* v. *Ajudhia Singh* (1), *Collector of Shahjahanpur* v. *Surjan Singh* (2), and *Banarsi Das* v. *Maharani Kuar* (3), followed.

Mr. *Zahur Ahmad*, for the appellant.

Mr. *M. Wasim*, for the respondent.

STUART, C. J., and RAZA, J. :—This is an appeal against a decision of the learned Subordinate Judge of Hardoi rejecting an application for execution of decree as barred by limitation. The decree was originally in favour of certain Sri Kishan who died in 1917. The names of Gauri Shankar and Ram Sahai were substituted for his name as decree-holders. Ram Sahai applied on the 2nd of May, 1922, for

* Execution of Decree Appeal No. 12 of 1926, against the order of Saiyid Khurshed Husain, Subordinate Judge of Hardoi, dated the 22nd of January, 1926.

(1) (1879) I.L.R., 1 All., 231. (2) (1882) I.L.R., 4 All., 72
(3) (1883) I.L.R., 5 All., 27.